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FEDERAL COMMUNICATIONS COMMISSION
DEPT. OF TRANSPORTATION

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of
Truth-in-Billing and
Billing Format

)
) CC Docket No. 98-170
)
)

REPLY COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association
("CTIA")¹ hereby submits its Reply Comments in the above
captioned proceeding.²

I. INTRODUCTION

The Billing Notice generated more than 70 Comments. As the
record makes clear, all commenters support the Commission's
fundamental intention to provide consumers with clear, accurate
bills for telecommunications service. The sheer number of
comments and the diversity of viewpoints reflected therein
demonstrate that a "one-size-fits-all" approach to billing

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¹ CTIA is the international organization of the wireless
communications industry for both wireless carriers and
manufacturers. Membership in the association covers all
Commercial Mobile Radio Service ("CMRS") providers and
manufacturers, including 48 of the 50 largest cellular and
broadband personal communications service ("PCS") providers.
CTIA represents more broadband PCS carriers and more
cellular carriers than any other trade association.

² In the Matter of Truth-in-Billing and Billing Format, CC
Docket No. 98-170, Notice of Proposed Rulemaking, FCC 98-232
(rel. Sep. 17, 1998) ("Billing Notice").

regulation is patently inappropriate. The adoption of specific, prescriptive rules also is inappropriate.

The record establishes that there are significant differences between the CMRS industry and other telecommunications carriers, and that these differences justify separate regulatory treatment. One of the most significant distinctions is the lack of record evidence that wireless carriers are committing the types of serious billing infractions such as slamming and cramming, that might justify government intervention.

In the absence of such evidence, the Commission is prohibited from adopting stringent billing regulations and guidelines for the CMRS industry. At most, the Commission should adopt billing guidelines of a general, flexible nature -- if at all.

CTIA's initial comments advocated that the Commission (1) tailor its billing regulations to the unique competitive circumstances existing in the CMRS industry; (2) respect CMRS carriers' First Amendment right to separately describe Federal, State, and local taxes and mandates; (3) permit carriers to require that each government entity imposing taxes and mandates on wireless services provide similar explanatory information; (4) refrain from holding CMRS carriers liable under Title II for actions taken by their customer service representatives; and (5) assert exclusive jurisdiction over all customer complaints pursuant to Section 208 of the Communications Act.³ By taking

³ 47 U.S.C. § 208.

such action, the Commission would protect the consumer's interest in receiving accurate, understandable bills without impairing competition, innovation, and efficiency in the CMRS market.

II. THE COMMISSION SHOULD REFRAIN FROM ADOPTING STRINGENT BILLING REGULATIONS FOR THE CMRS INDUSTRY.

The record in this proceeding demonstrates the need for the Commission to tailor the application of its billing guidelines to the unique circumstances of the wireless industry. Many industry commenters have provided persuasive evidence that, as a factual matter, separate regulatory treatment is required.⁴ Moreover, many CMRS carriers are approaching billing matters with the

⁴ See, e.g., Comments of BellSouth Corporation at 13 (CMRS carriers are exempt from equal access requirements; carriers tend to bundle local and long distance service); *id.* at 15 (it would cost between \$500,000 to \$1 million in programming charges to add an additional page of CMRS billing information); Comments of Omnipoint Communications, Inc. at 10 (the Commission should not regulate prepaid mobile services under its billing regulations as there are no bills for this service); *id.* at 14 (universal service contributions are not constant, and it is not always possible to determine the exact amount each customer should pay); Comments of PrimeCo Personal Communications, L.P. at 6 (minor cosmetic bill changes relating to font, etc. can cost more than \$100,000; any service changes are requested by the CMRS customer, thereby removing the possibility of unauthorized charges); *id.* at 9 (noting special disclosure issues associated with CMRS roaming); Comments of SBC Communications Inc. at 7 (there is less potential for customer confusion since most wireless carriers only bill for their own services); Comments of Teligent, Inc. at 7 (electronic billing can provide needed detail and should not be prohibited); Comments of GTE at 10 (in the cellular industry, some customers like detailed listings of calls while others do not; inflexible rules will prohibit this, contrary to customer preference); Comments of Nextel Communications, Inc. at 10-11 (the mobile nature of wireless services renders it difficult to assess State and local taxes); Comments of Bell Atlantic Mobile at 12-13 (Commission's rules should not thwart the development of nationwide one-rate plans by attaching unnecessary disclosure obligations).

appropriate focus -- what does the consumer want and need.⁵ This is precisely the kind of industry response that the Commission should desire. Surveying consumer preference is an effective means to reduce customer confusion. In light of these market conditions, billing rules, if necessary, should be flexible and broad. This conclusion is shared by regulators, consumer interest groups and carriers alike.⁶

⁵ See, e.g., Comments of Sprint Corporation at 12 (market research, including focus groups, regarding billing statement prototypes); Comments of Nextel Communications, Inc. at 4 (employed customer feedback and focus groups to assess customer concerns); Comments of Petroleum Communications, Inc. at 4 (to maintain customer satisfaction, billing is individualized according to user demands); Comments of Southern Communications Services, Inc. at 3 (conducted customer surveys regarding bills); Comments of Liberty Cellular, Inc. at 3 (bills should be designed based upon customer feedback).

⁶ See, e.g., Comments of the New York State Consumer Protection Board at 6 ("guidelines, rather than regulations are the appropriate remedy [for customer confusion]. Such an approach would be consistent with the [Federal Communications] Commission's continuing emphasis on deregulation and market responsibility."); Comments of the New York State Department of Public Service at 1 ("Rather than adopt prescriptive rules that could dampen market innovation, . . . the Commission should rely on the market participants to develop billing formats that meet consumers' information needs."); Comments of the Public Service Commission of Wisconsin ("PSCW") at 5 ("carriers should be able to provide the required information in the manner that allows them the greatest flexibility. . . the PSCW believes that the Commission, at most, should mandate simply the subject matter or broad categories of information which carriers must provide without getting into specifics"); Comments of the National Consumers League at 6 ("the FCC should provide general guidance for billing format to ensure that the relevant information is clear and conspicuous"); Comments of Global Telecompetition Consultants, Inc. at 4 ("there is less need, most probably no need, for the Commission to expend policy development resources in the area of competitive billing enterprises. That is not to say the Commission should not be or will not be responsive to specific problems . . . expending limited government resources on a sometime-infrequent problem is a waste");

Significantly, commenters have not provided record evidence of a pattern of misconduct by CMRS carriers that would suggest that cramming and slamming are prevalent problems for consumers of wireless services.⁷ In fact, most commenters in favor of the Commission's adoption of billing regulations for the telecommunications industry make no mention of the CMRS industry,⁸ and limit their discussion to issues surrounding the incumbent local exchange carrier ("LEC") and long distance

Comments of Centurytel at 1 ("the Commission [should] adopt broad guidelines rather than precise prescriptions to ensure that the industry produces accurate and understandable bills").

⁷ See, e.g., Comments of AirTouch Communications, Inc. at 2 ("most of the proposed rules appear aimed at stemming abuses attending the inclusion of third party bills in customers' primary telecommunications bill. However, as CMRS providers do not, for the most part, provide third parties access to their bills, the rules are largely inappropriate for the wireless industry."); id. at 6 (noting that recent Congressional proposals designed to deter telecommunications fraud such as cramming and slamming would have exempted CMRS providers from such regulation because the number of slamming complaints in the wireless industry were negligible); Comments of Bell Atlantic Mobile, Inc. at 7 ("slamming does not and cannot occur in the wireless context").

⁸ Only a few commenters even mention CMRS by name. See, e.g., Comments of the Florida Public Service Commission at 7 (noting that cellular carriers can call universal service charges by different names); Comments of New Networks Institute ("NNI") at 3, 12, 13 (criticizing fine print techniques employed by cellular phone and prepaid card offers). Notwithstanding its reliance upon dated research (the most recent study cited was conducted in 1995, with other studies in 1993), the relief requested by NNI is beyond the scope of this proceeding. That is, this proceeding relates to billing practices, not advertising practices. Nor does it affect a service such as CMRS prepaid card offerings, where no bill is generated.

carrier billing practices.⁹ Though the Commission has expansive authority to implement comprehensive regulations that are in the public interest, "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist."¹⁰

The lack of evidence of misconduct on the part of CMRS carriers underscores how important it is that the Commission not lose sight of its ultimate concern in this proceeding: to protect consumers from fraudulent, misleading carrier conduct. The adoption of billing regulations are means to an end. They are designed to (1) permit consumers to take full advantage of a competitive market by making informed telecommunications service choices; and (2) decrease incidences of fraudulent carrier conduct by providing the customer with the means to police their service offerings. CTIA is confident that the issue of clarity in billing practices is best left to the competitive wireless marketplace. Carriers have every reason to ensure that charges and service are clearly described to their customers. If consumers are not adequately informed, wireless carriers will

⁹ See, e.g., Comments of the Federal Trade Commission (discussion centered largely on the incumbent local exchange carriers' bill); Comments of the National Association of Attorneys General; Comments of the Consumer Advocate Division of the Public Service Commission of West Virginia at 4-5; Comments of the Minnesota Office of Attorney General (comments generally limited to long distance carrier behavior); Comments of Competitive Telecommunications Association at 3 ("the FCC should limit any rules adopted in this proceeding to the bills sent to consumers by ILECs").

¹⁰ Home Box Office, Inc. v. F.C.C., 567 F.2d 9, 36 (D.C. Cir. 1977) (citation omitted) (emphasis added).

lose them as customers. Poorly informed customers and confusion about their bills directly increases the significant resources carriers must devote to customer retention efforts.¹¹ Given the market incentives for voluntary industry compliance, stringent, detailed billing regulation for CMRS providers is simply unwarranted on a cost-benefit basis.¹² Were the Commission to adopt rules intended primarily to address the problems of other industry segments, such detailed rules would also run the risk of causing confusion and dissatisfaction for wireless customers.

There are now 60 million CMRS subscribers nationwide. This means that there are approximately 60 million bills issued monthly. Inevitably, there will be errors on some of these bills. This should not be mistaken for a systematic, deliberate

¹¹ See, e.g., Comments of AirTouch at 8 (if customers are confused by a bill, then they will call the carrier. This takes up valuable attention by customer service representatives, and can result in the loss of business).

¹² In considering and promulgating regulations, the Commission is obligated to undertake at least a minimal cost benefit analysis and to attempt to identify the most effective means for realizing its goals. If the Commission determines that there is a sufficient problem warranting government intervention, there must be a "rational connection between the facts found and the choice made." This deliberation necessarily must take note of the scant record supporting detailed billing obligations for CMRS carriers. See Burlington Truck Lines v. U.S., 371 U.S. 156, 168 (1962); see also Cincinnati Bell Telephone Co. v. F.C.C., 69 F.3d 752, 759 (6th Cir. 1995) (rebuffing the Commission's twenty percent cellular attribution standard as bearing "no relationship to the ability of an entity with a minority interest in a Cellular licensee to obtain a Personal Communications Service license and then engage in anti-competitive behavior."); Aeronautical Radio, Inc. v. F.C.C., 928 F.2d 428, 447 (D.C. Cir. 1991) (overturning the imposition of a cash-only deposit to prove financial viability because the "cash-only requirement bore no apparent relation to the true financial fitness.")

attempt to engage in slamming, cramming, or otherwise defrauding the consumer. Customer care is a competitive issue for the CMRS industry. As noted above, there is every reason to believe that competition will ensure appropriate disclosure to reduce customer confusion.

Were the Commission to regulate CMRS carrier billing practices stringently, such that simple carrier billing mistakes are treated as serious offenses (subject to extreme penalties), consumers ultimately will be most disadvantaged. Competition, innovation and efficiency are the hallmarks of the wireless industry. The Commission's billing regulations should in no way impair these objectives by freezing the type and presentation of information presented in bills or the means of presenting the bills themselves. Detailed billing regulation has that potential, and should be avoided at the outset.

There is broad agreement that slamming and cramming are important issues and that consumers deserve protection from these practices. But, as some carriers note, reforming bills alone will not necessarily thwart inappropriate carrier conduct toward consumers.¹³ In this case, the Commission's vigilance is best exercised through targeted, coordinated efforts with other enforcement agencies to prevent and punish fraudulent activity.

¹³ Comments of Bell Atlantic at 2 ("changing the format of the telephone bill will not stop slamming and cramming -- the format of the bill is not the cause of these problems. . . . if the Federal government wants to stop slamming and cramming, it should go after slammers and crammers directly."); Comments of U S WEST Communications, Inc. at 11 ("our bill format is not the source of material confusion or deception *vis-a-vis* our customers").

The Commission should refrain from devoting the bulk of its resources to more indirect compliance methods such as billing regulation.¹⁴

¹⁴ In other words, the Commission should avoid devoting its enforcement resources to proofing carrier bills to ensure the proper font size or that charges are separated by different pages.

III. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission adopt the proposals made herein and in its initial Comments.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**



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